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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4965 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.

2. To be referred to the Reporter or not? Yes.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge? No.

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G S R T C

Versus

JAGMAL SARMAN

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Appearance:

MR SM MAZGAOKARF, for Petitioner.

MR HK RATHOD for Respondent.

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 01/12/97

ORAL JUDGEMENT

Heard learned counsel for the parties.

2. The challenge has been made by the Gujarat State Road Transport Corporation in this Special Civil Application to the award dated 11-3-1986 of the Labour Court, Rajkot passed in Reference (LCR) 1921/84. The

respondent workman is a conductor of the Corporation. He was charge-sheeted for having committed the misconduct. On 16-4-1983 while he was on duty, on a bus plying from Porbandar to Rajkot, when the bus was checked at Ranavav it was found that he has collected fare from two travelling passengers but he had not issued the tickets to them. Similarly, he had collected fare from the passengers travelling from Porbandar to Upleta and the tickets were not issued in their favour also. For this misconduct, on its proved, penalty of withholding of four grade increments with future effect was given to the respondent. However reviewing authority enhanced the penalty and the respondent workman was ordered to be dismissed from the services of the Corporation.

3. The industrial dispute has been raised by the respondent which was referred to the Labour Court, Rajkot and under the impugned award the workman is ordered to be reinstated back to his original post with continuity of service but without back wages. It was further ordered that the workman should be reinstated two stages behind in his pay-scale of the conductor.

4. The labour court found the departmental inquiry held by the Corporation in this case to be legal and valid. The Labour Court held that the misconduct of the workman of collecting fare and not issuing the tickets to the passengers is not proved by the evidence. However, the labour court held that the misconducts of the workman-conductor of the road booking is proved on his admission. But for this misconduct punishment of dismissal was held to be quite disproportionate to the guilt proved.

5. Learned counsel for the petitioner contended that the labour court has committed a serious error in taking lenient view merely because the road report has not been produced. The learned counsel for the petitioner is unable to satisfy this Court how in absence of the evidence of the road report the findings recorded by the labour court that the misconduct alleged against the workman for collecting the fare and not issuing the tickets is not proved, suffers from any infirmity or illegality. Whether the misconduct is proved or not proved is a question of fact and after appreciating the evidence in case the labour court has come to the conclusion that the misconduct is not proved and while coming to this finding in case it has taken the fact that reporter was not examined, it cannot be said to be a wrong consideration. I find from the award of the labour court that the workman has not resorted to any dishonest

intention.

6. Taking into consideration totality of the facts of the case, I do not find any illegality in the award of the labour court. For the misconduct of the road booking the respondent workman has been sufficiently punished by the labour court. He was not given back wages and further he was ordered to be reinstated two stages behind in his pay scale of the conductor.

7. In the result, this special civil application fails and the same is dismissed. Rule discharged. No order as to costs. Interim relief if any granted by this Court stands vacated.

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